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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAR 29 2010**

EAC 08 149 51496

IN RE:

Petitioner:

[Redacted]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition for the petitioner's failure to establish: (1) that he had a qualifying relationship as the spouse, intended spouse, or former spouse of a U.S. citizen; (2) that he is eligible for immigration classification based on the qualifying relationship; and (3) that he had been subjected to battery or extreme cruelty perpetrated by his U.S. citizen spouse.

On appeal, counsel submits a brief, resubmits a number of documents, and submits additional documents.

The AAO concurs with the director's determination that the petitioner has not established the requisite battery or extreme cruelty and that he has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in

pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Albania. He married P-C-¹ a United States citizen, in New York on March 11, 2004. The record includes a divorce judgment brought by P-C- against the petitioner dissolving the

¹ Name withheld to protect individual’s identity.

marriage on August 22, 2007 because of the constructive abandonment of P-C- by the petitioner for a period of more than one year. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on April 14, 2008. The petitioner indicated on the Form I-360 that he had resided with the petitioner from December 2003 to present. The Form I-360 is dated September 28, 2007 although it was not filed with USCIS until April 14, 2008. The director issued a request for further evidence on May 7, 2008. Upon review of the response, the director determined that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage; that he had a qualifying relationship with a United States citizen; and that was eligible for immigrant classification as a qualifying relative.

As will be discussed below, we concur with the director's determination that the petitioner has not established the requisite abuse to establish eligibility for this benefit. As noted above, the petitioner's divorce judgment is dated August 22, 2007 and the petitioner filed the Form I-360 on April 14, 2008. As the petitioner's marriage was terminated prior to filing for this benefit and the petitioner has not established a causal connection between the legal termination of the marriage and the claimed battery or extreme cruelty by the former U.S. citizen spouse, he is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen, and also failed to establish that he is eligible for immediate relative classification based on a qualifying relationship with his former wife. There is no exception to this requirement.

Battery or Extreme Cruelty

In an initial undated statement, the petitioner noted that he met P-C- in 2001 and dated her for three years during which time she disguised her true nature. The petitioner indicated that as soon as they married on March 11, 2004, they moved in together until March 2007. The petitioner indicated further that P-C- betrayed him by spending large amounts of money without any explanation. The petitioner noted that "[d]uring the middle of [their] marriage she started going out late at night and coming home drunk," and when he asked about her whereabouts she gave inconsistent answers. The petitioner noted further that they argued many times the last year of their marriage because he questioned her weird behavior. The petitioner stated that P-C- became very aggressive and broke many things in the house especially when he asked her to help pay the rent. The petitioner noted that the landlord happened to be a witness three times during her aggressive incidents. The petitioner stated that he began to suspect that she was cheating on him and that she ended the marriage by telling him that she was pregnant with another man's child.

The initial record also included an October 2, 2007 psychological evaluation prepared by [REDACTED]. Dr. [REDACTED] noted that according to the petitioner, the petitioner had suffered horrible intimidation, death threats, and physical violence in his native Albania and that in June 2007 his divorce from P-C- triggered the past traumas he had suffered in Albania. [REDACTED] noted that the petitioner had "undergone therapy for those dormant disorders which were exposed by the heartbreaking divorce with his [former spouse]." [REDACTED] indicated that the petitioner had been under his therapy for three months and opined: that the petitioner's "mental disorders are consistent

with his accounts of persecution [and] therefore the impact of losing his wife only triggered his stress.” [REDACTED] further opined: “[h]e suffers all this because it is due to his experiences in Albania.” [REDACTED] diagnosed the petitioner with post traumatic stress disorder, major depressive disorder – chronic, and recurrent headaches.

In response to the director’s RFE, counsel provided the petitioner’s second personal statement, dated July 18, 2008. The petitioner added to his previous statement by noting that his former spouse’s actions were often threatening and abusive. The petitioner indicated that when he told his former spouse that he could not continue with the marriage after her affair she became violent smashing plates and calling him names. The petitioner noted that sometimes his wife would spit in his face. The petitioner stated that his former spouse would intentionally spill her drink on the floor and if he did not clean it up said that: “she would call the police.” The petitioner added that he experienced “much verbal abuse” including name calling and threatening his life long dream of living in America. The petitioner noted that his former spouse was always threatening to call the police on him if he did not do as she asked and that she knew he feared the police because of his experiences in Albania. The petitioner noted that he confided in a friend in 2004 regarding his former spouse’s abuse and that the friend recommended that he undergo therapy. The petitioner further noted that his physical and mental health suffered due to his former spouse’s abusive behavior and that he is stressed, frightens easily, cries frequently, and feels depressed and anxious all the time, as well as has become socially withdrawn from his friends.

The petitioner also submitted three affidavits including:

- An affidavit dated June 30, 2008 from [REDACTED] who declared that she had known the petitioner for three years, that the petitioner’s former spouse, P-C-, is her niece, that the petitioner and P-C- were unable to make the marriage work because of the mental and emotional abuse, that P-C- constantly went out and stayed out late, that she started to drink and neglect her role as a partner in the relationship, that the affiant witnessed several occasions where P-C- would degrade the petitioner, and that P-C- constantly threatened to leave him.
- An affidavit dated June 30, 2008 from [REDACTED] who declared that she had known the petitioner for three years, that P-C- is her cousin, that she has witnessed the couple arguing when she visited them, that P-C- would antagonize the petitioner by telling him she was going to spend the money for bills to go out with friends, and that the affiant told P-C- what she was doing and saying to the petitioner was uncalled for but that P-C- just laughed.
- An affidavit dated June 26, 2008 from [REDACTED] the petitioner’s landlord, who declared that he had known the petitioner for eight years and that for some time the petitioner’s marriage seemed to be going well but after some months disagreements started to emerge. The affiant related an episode when he went to the petitioner’s apartment to collect the rent and the petitioner asked P-C- why she had not given the rent money to the landlord and P-C- started to scream, insult, and humiliate the petitioner and even spat in his face.

The petitioner also provided a second evaluation, dated June 18, 2008, from [REDACTED] in response to the RFE. [REDACTED] revised his initial report and no longer indicated that the petitioner was under his care. [REDACTED] opined: “[t]he starting point of [the petitioner’s] mental disorders has been in response to the severe cruelty that he received during his marriage to his wife [P-C-].” [REDACTED] repeats the information the petitioner provided in his second statement and referenced the petitioner’s divorce as on March 11, 2004, the actual date of the marriage. [REDACTED] noted that the petitioner “has been undergoing therapy ever since his mental breakdown years ago for fear of not having his dream to have a happy life in America come true.” [REDACTED] noted the petitioner’s symptoms as chronic anxiety disorder (panic attack) and apprehension, tension, and uneasiness if he is returned to Albania. [REDACTED] also noted that the petitioner described significant difficulties after his experiences with his former spouse including physical and mental symptoms, especially when he heard the word police. [REDACTED] reiterated his previous diagnosis and opined that the petitioner needed psychotherapy treatment to help him cope with trauma symptoms.

As observed, above, based on the evidence presented, the director denied the petition on February 24, 2009.

On appeal, counsel for the petitioner asserts that the petitioner has a qualifying relationship with his former spouse, is eligible for immigrant classification as an immediate relative, and was subjected to physical abuse and extreme cruelty perpetrated by his former spouse. As the petitioner filed his Form I-360 subsequent to his divorce, the petitioner may only establish the first two criteria for the benefit if the petitioner establishes that he was subjected to battery or extreme cruelty by his former spouse and there is a connection between such abuse and the legal termination of the marriage. As such, the AAO focuses only on counsel’s assertions and information submitted on appeal in regard to the abuse element.

Counsel asserts that the director’s characterization of the petitioner’s difficulties with his former spouse as marital incompatibility is in error. Counsel refers to the petitioner’s July 18, 2008 personal statement and the affidavits submitted on his behalf as evidence that the petitioner was subjected to emotional and mental abuse including name calling, humiliation, and threats to call the police when the former spouse knew of the petitioner’s fear of police. Counsel submits the petitioner’s third personal statement in which the petitioner claims that he was a victim of physical abuse. The petitioner states that the behavior of his former wife was abusive, that she threw objects at him, that he never felt safe around her, and that she would spit in his face. The petitioner states further that he was subjected to extreme cruelty because his former spouse called him names, swore, and made him feel bad about himself. The petitioner states that his former spouse used his immigration status against him by humiliating him in front of friends because of his lack of status, and that knowing his fear of police she would threaten him to keep him in line and follow her demands.

Counsel also submits a March 17, 2009 affidavit from [REDACTED] who relates an incident at her 40th birthday party where the petitioner’s former spouse called the petitioner names. [REDACTED] also states that the petitioner’s former spouse “constantly threatened to leave [the petitioner] and call Immigration to deport him.” The record on appeal also includes a March 19, 2009 affidavit from

██████████ who states that while visiting the petitioner and P-C- at a Christmas gathering, the landlord stopped by to ask for the rent money and when the petitioner asked P-C- for the rent money she threw a glass at him and that P-C-'s tirade continued throughout the evening and included calling the petitioner names. ██████████ relates another incident at the beach when she witnessed the petitioner approach P-C- to give her a hug and P-C- pushed him away, cursed at him, and picked up a handful of sand and threw it at him. ██████████ also notes that the petitioner's spouse continued to antagonize the petitioner by telling him he was good for nothing and that she was going to call the cops and have him deported.

The record on appeal also includes a letter written by ██████████ dated April 11, 2009 wherein ██████████ notes that this statement is being submitted to resolve any discrepancies in his two prior reports. ██████████ opines: that the petitioner "exhibits the traits of an individual who has been in abusive relationships based upon [his] professional experience because of the traumatic behavior [the petitioner] was displaying in therapy." ██████████ acknowledges that his October 2, 2007 report mentioned the psychological hardships the petitioner had endured in Albania but contends that this does not preclude the fact that the petitioner also endured hardships as an abused spouse. ██████████ notes further that the petitioner's spouse's threats to call the police were even more detrimental to the petitioner's well being because of his past.

The AAO finds that the petitioner has not established the requisite abuse to qualify to receive this benefit. In his initial statement, the petitioner noted his former spouse's excessive spending habits, her drinking and staying out late, her aggressive behavior of throwing things when he asked her to help pay the rent, and her infidelity. The petitioner's second statement included his former spouse's behavior when he told her he could not continue with the marriage after her affair, including smashing plates and calling him names. The petitioner also spoke of his former spouse's spitting in his face, threatening to call the police if he did not clean up her intentional messes, calling him names, and threatening his dream of living in America. The petitioner indicated that his landlord had witnessed three of these incidents. The petitioner also noted that his former spouse knew of his fear of police because of his experiences in Albania. In the petitioner's third statement on appeal he adds that his former spouse threw objects at him and that he never felt safe around her and that she used his immigration status to humiliate him in front of friends. The petitioner reiterates that his former spouse would spit in his face and knowing his fear of police would threaten him to keep him in line.

The AAO observes that the petitioner's three affidavits show a gradual escalation of the abuse he allegedly suffered. When he filed the petition, the petitioner's claim of abuse was focused on infidelity, drinking and throwing things when he asked P-C- about rent. When the petitioner responded to the RFE, his claim of abuse had expanded to smashing plates, calling names, spitting on him, and threatening to call the police if he did not clean up her messes. On appeal, the petitioner adds in that his former spouse threw things at him. The escalation of events and the type of the petitioner's former spouse's behavior amounts to inconsistent testimony on the part of the petitioner. The escalation of P-C-'s behavior appears to have been tailored to establish eligibility for this benefit; the AAO finds however, that the escalation of the testimony serves to undermine the credibility of the petitioner's testimony. The AAO also observes that the petitioner stated that his

landlord witnessed three aggressive incidents by his former spouse; however, the landlord only speaks of one incident. Moreover, the AAO concurs with the director's characterization of the actions of P-C-. The AAO finds that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation and that the circumstances of the couple's behavior depicted a deteriorating marriage and not psychological, sexual abuse or exploitation on the part of P-C-, or that her actions were part of an overall pattern of violence.

The AAO has reviewed the affidavits submitted on the petitioner's behalf and finds that the limited number of incidents the affiants allegedly witnessed reflect the turmoil of a dysfunctional marriage. In their initial affidavits, [REDACTED] and [REDACTED] discuss P-C-'s failure as a partner in the relationship, threats to leave the petitioner, and arguments the couple had regarding money. On appeal, [REDACTED] indicates that P-C- constantly threatened to leave the petitioner and call Immigration to deport him. [REDACTED] does not indicate that she witnessed these actions and she does not provide specific information regarding the circumstances of these incidents. Similarly, [REDACTED] reports that she witnessed two incidents, one where P-C- threw a glass at the petitioner, called him names and another when P-C- rebuffed the petitioner's advances. These statements are insufficient, in and of themselves, to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that P-C-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The statements provided are general, do not provide a timeline of the events that occurred during the three years these two individuals allegedly knew the couple, and do not provide the probative detail necessary to establish that the petitioner suffered abuse perpetrated by P-C-. While we acknowledge the affiants' claim that P-C- threatened to report the petitioner to Immigration or to the police, the petitioner has not provided the substantive evidence necessary to demonstrate that P-C-'s threats while, unkind and inconsiderate, rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Upon review of the reports prepared by [REDACTED] the AAO does not find [REDACTED] reports probative. Although the AAO accepts [REDACTED] professional training and experience, his initial report did not provide examples of the causal relationship of specific spousal abuse that was consistently detailed to his diagnosis of the petitioner's post traumatic stress disorder, major depressive disorder and headaches. Rather [REDACTED] focused on the petitioner's claimed negative treatment in Albania and only noted that P-C-'s leaving² the petitioner triggered the petitioner's stress. [REDACTED] did not detail the underlying trauma or causative factors to support a conclusion that the petitioner presented with the symptoms and characteristics of a battered spouse. The AAO observes that [REDACTED]s second report mirrored the language the petitioner used in his second statement and [REDACTED] characterized the behavior of the petitioner's spouse as "severe cruelty," a

² The AAO observes that the divorce decree issued August 22, 2007 was brought by P-C- and alleged that she had been abandoned by the petitioner for over a year. Thus, the information in the divorce decree does not comport with the petitioner's version of events.

significant departure from his first report. The AAO further observes that [REDACTED] initially indicated that the petitioner had been under his care for three months and no longer indicated he was treating the petitioner in his second report. Neither of [REDACTED] reports specifically sets out the number of sessions the petitioner attended with [REDACTED] or the length of those sessions. The varied opinions of [REDACTED] are not resolved by his letter submitted on appeal. The AAO acknowledges [REDACTED] statement that the psychological hardships the petitioner had endured in Albania do not preclude the fact that the petitioner also endured hardships as an abused spouse; however, the AAO questions a second opinion that is not based on the petitioner's continued therapy but rather on the petitioner's statement and is an opinion subsequent to the termination of the petitioner's treatment by [REDACTED]. The AAO finds that the evaluations prepared by [REDACTED] lack probative value as they do not include a reasoned opinion based on facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of a battered spouse, rather than anxiety related to the petitioner's immigration status.

The petitioner in this matter has provided general accounts of the alleged emotional abuse and has not provided evidence of physical abuse. The petitioner has provided statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. In addition to the generality of most of the information in the record, the petitioner has also submitted inconsistent information. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and inherent inconsistencies to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.